

REMARKS

This responds to the Office Action dated January 7, 2005.

Claims 1, 20, 43, 52 and 54 are amended. Claims 4, 23, and 24 are cancelled. Claims 56-63 are added. As a result, claims 1-2, 15, 20-22, 25-27, 43-47, 52, 54-63 are now pending in this patent application.

Objection to the Specification

The specification was objected to due to an informality. Applicant has amended the specification to overcome this rejection. Accordingly, Applicant respectfully requests withdrawal of this objection.

§101 Rejection of the Claims

Claims 1, 2, 15 and 20-07 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subjected matter. The rejection asserts that claiming of structures being in contact with or implanted within the body, or the claiming of a current being introduced into the body amounts to an inferential recitation of the body, which renders these claims non-statutory. (*See* Office Action at 2.) Applicant respectfully disagrees that mere recitation of a body could somehow reasonably be construed as actually claiming the body. Applicant respectfully requests that legal precedent or M.P.E.P. guidance be cited in support of such an assertion, or withdraw this basis of rejection of these claims.

Alternatively, Applicant gratefully notes that the Examiner has helpfully provided a suggestion to include the language “adapted to” to overcome this rejection. Applicant respectfully requests additional helpful clarification as to how the Examiner would suggest applying such language in the context of the present claims, and Applicant will certainly consider including such language in a subsequent amendment to the claims to resolve this issue.

§112 Rejection of the Claims

Claims 4, 54 and 55 were rejected under 35 U.S.C. § 112, second paragraph, for indefiniteness.

Claim 4 has been cancelled, thereby mooting this basis of rejection of this claim.

Claim 54 has been amended to depend from 52, thereby overcoming this basis of rejection of claims 54 and its dependent claim 55. Accordingly, Applicant respectfully requests withdrawal of this basis of rejection of claims 54-55.

§102 Rejection of the Claims

Claims 1, 2, 15, 20-22, 25-27, 43-46 and 52 were rejected under 35 U.S.C. § 102(e) as being anticipated by Haubrich et al. (U.S. Patent No. 6,482,154). As an initial note, Applicant reserves the right to swear behind Haubrich et al. at a later date as permitted under 37 C.F.R. § 1.131. However, Applicant overcomes this rejection using Haubrich, as discussed below.

Applicant cannot find in Haubrich et al. any disclosure of using the same sensing circuit to detect both a telemetry activation signal and at least one of a cardiac signal and a respiration signal, as presently similarly recited or incorporated in the claims, and support for which is found in the present patent application specification at page 22, lines 16-19. Accordingly, Applicant respectfully requests withdrawal of this basis of rejection of these claims.

§103 Rejection of the Claims

1. Claims 23 and 47 were rejected under 35 U.S.C. § 103(a) for alleged obviousness over Haubrich et al. (U.S. Patent No. 6,482,154) in view of Funke (U.S. Patent No. 4,987,897).

Claim 23 has been cancelled, thereby mooting this basis of rejection of claim 23.

Claim 47 incorporates all of the language of claim 43, which similarly describes using the same sensing circuit to detect both a body-current telemetry activation signal and at least one of a cardiac signal and a minute ventilation signal. Applicant cannot find any disclosure, teaching, or suggestion of this in Haubrich et al. and/or Funke. For example, Fig. 1 of Funke shows a separate body current receiver 26 and cardiac signal sense amplifiers 18 and 22. (*See also* Funke

at col. 6, lines 20-40.) Applicant can find no disclosure, teaching, or suggestion in Funke and/or Haubrich et al. of using the same sensing circuit for both detecting a telemetry activation signal and at least one of a cardiac signal and a minute ventilation signal, thereby saving size and power consumption in the implantable medical device. Indeed, Applicant can find nothing in these references that would even suggest that the same sensing circuit could be used for two such different purposes, with attendant differences in practical constraints imposed by such different purposes. Accordingly, because all elements presently claimed cannot be found in Haubrich et al. and/or Funke, Applicant respectfully submits that no *prima facie* case of obviousness presently exists with respect to claim 47. Therefore, Applicant respectfully requests withdrawal of this basis of rejection of this claim.

2. Claim 24 was rejected under 35 U.S.C. § 103(a) for obviousness over Haubrich et al. (U.S. Patent No. 6,482,154). Claim 24 has been cancelled, thereby mooted this basis of rejection of claim 24.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6951 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

JEFFREY A. VON ARX ET AL.

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.

P.O. Box 2938

Minneapolis, MN 55402

(612) 373-6951

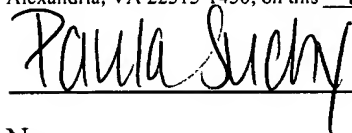
Date April 7, 2005

By 

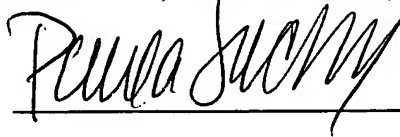
Suneel Arora

Reg. No. 42,267

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: MS Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 7 day of April, 2005.



Name



Signature